

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LONNIE DAWSON	: CIVIL ACTION
	:
vs.	:
	:
ACTING WARDEN HOLENCHÉ,	:
<u>ET AL.</u>	: NO. 09cv3691

MEMORANDUM

YOHN, J.

MARCH 29, 2011

The Report and Recommendation of the Magistrate Judge was filed on April 27, 2010. Petitioner had fourteen days from the date of service upon him to file objections. No objections were filed and on May 20, 2010, twenty-three days after filing, the court approved and adopted the Report and Recommendation, which recommended dismissal due to AEDPA's statute of limitations, and dismissed the petition. Petitioner's objections were then filed on May 26, 2010. The court reviewed the specific objections and entered an order on June 3, 2010 dismissing the objections as untimely and on the merits since they did not deal with the statute of limitations.

The petitioner filed a motion for reconsideration to "hear his objection." The motion was signed on June 22, 2010 and filed on June 28, 2010. The motion alleged that he did not receive the Report and Recommendation until May 4, 2010. He prepared his objections and placed them in the institutional mail on May 17, 2010. The objections are so dated. They were returned to him by prison officials for a minor correction, which he made, and they were returned to the mail room of the institution on May 18, 2010 for filing. They were filed on May 26, 2010. Thus, his objections to the Report and Recommendation were placed in the institutional mail in a timely fashion from the date on which he was served. They were, however, denied on the merits in the court's order of June 3, 2010.

The motion for reconsideration further stated that he received the order dated May 20, 2010 adopting and approving the Report and Recommendation and dismissing the petition on June 14, 2010. Although the motion to reconsider was not timely under Local Rule 7.1(g) which requires it to be served and filed within fourteen days after the entry of the judgment, order or decree concerned, the court will consider it as timely in view of the fact that the order dated May 20, 2010 which caused the motion to reconsider was not received by the petitioner until June 14, 2010 and his motion was signed eight days later on June 22, 2010.

The motion for reconsideration was dismissed by the court on June 29, 2010 as moot in that the court had already reviewed the objections and rejected them on their merits in its order dated June 3, 2010.

The petitioner filed his notice of appeal ten days later on July 9, 2010 alleging that he did not receive the order dated June 3, 2010 until June 29, 2010 as verified by his counselor.

Under these circumstances the court construes his motion for reconsideration signed June 22, 2010 and filed June 28, 2010 to be a motion to extend the time to appeal under Federal Rule of Civil Procedure 4(a)(5) and that the petitioner has shown good cause for the delay in filing his notice of appeal so the time for petitioner to file a notice of appeal, which was originally May 20, 2010 to June 19, 2010 is extended at the least for thirty days to July 18, 2010. The petitioner's notice of appeal, in this court's view, is therefore timely.

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O R D E R

**AND NOW**, this 29<sup>th</sup> day of March, 2011, pursuant to the Order of the U.S. Court of Appeals for the Third Circuit filed March 8, 2011 in 10-3084, the court finds that petitioner's notice of appeal, filed July 9, 2010, together with his June 28, 2010 motion for reconsideration is construed as a motion to extend the time to appeal under Federal Rule of Civil Procedure 4(a)(5).

**IT IS FURTHER ORDERED** that the Clerk shall forward a copy of this memorandum and order to the U.S. Court of Appeals for the Third Circuit for its consideration.

s/William H. Yohn Jr.  
William H. Yohn Jr., Judge